

1979 WL 42751 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1979

***1** Mr. Phillip Mixon
Chairman of Lee County Election Commission
Morgan Street
Bishopville, South Carolina 29010

Dear Mr. Mixon:

You have recently asked the opinion of this Office as to who would be eligible to vote in the new election ordered by the Governor to fill Lee County Council Seat 6.

As I understand the circumstances, the original election for Lee County Council District Seat 6 was conducted at the general election held on November 7, 1978. However, the result of this election as to Seat 6 were voided by the Board of State Canvassers by a written order dated December 13, 1978, which is attached hereto. The Board's order is based on the findings that (1) there was a 'substantial overvote, i.e., more votes counted for candidates than persons who actually voted,' (2) the 'intent of the qualified voters of District 6 cannot be ascertained,' and (3) the overvote 'affected the result of the election.' Subsequent to the issuance of the order of the Board of State Canvassers, the Governor ordered a new election pursuant to [§ 7-13-1170 of the Code of Laws of South Carolina](#), 1976, as amended.

It would appear that § 7-13-1140 would apply to the facts of this situation. This section is applicable when the number of votes found in a ballot box exceeds the number of voters listed on the poll list at the polling place(s). When the difference between these two numbers exceeds a certain percentage, a new election must be held at the concerned polling place(s). § 7-13-1140 also provides that: 'Only those who signed the poll list shall be permitted to vote in any such new . . . election.'

By analogy the same principle would apply to an entire county council district election where the overvote is so substantial that it renders the intent of the qualified voters unascertainable and where the original ballots have been destroyed.

The order of the State Board of Canvassers states that the over-vote in County Council District 6 resulted from the utilization of a defective ballot. Although Lee County has chosen the single member district method for electing its county council, all of the ballots used on November 7, 1978, listed the candidates for each of the council districts. In District 6, this allowed voters who were not residents of the District to vote for that seat. The problem was further complicated by the destruction of the ballots after the election. Thus, the new election in this District necessitated by the defective ballots is similar to the one that would be required if a voting machine had malfunctioned thereby causing the votes cast not to be properly tabulated. In the latter situation, this Office has been of the opinion that the qualified voters whose votes were not properly counted must be allowed to recast their ballots. The same reasoning would apply to the present situation.

Based on the foregoing reasons, it is the opinion of this Office that only those qualified voters who signed the poll list at the November 7, 1978, general election would be eligible to vote in the new election ordered by the Governor.

Sincerely yours,

***2** James M. Holly
State Attorney

1979 WL 42751 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.